

Town of Weare

ZONING BOARD OF ADJUSTMENT

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MEETING MINUTES

Tuesday, December 4, 2012

****1st DRAFT COPY****

PRESENT: Jack Dearborn, Chairman; Forrest Esenwine, Vice Chairman; Neal Kurk, Member; June Purington, Member; Stu Richmond, Member; Chip Meany, Land Use Coordinator; Sheila Savaria, Recording Secretary

GUESTS: Ginger Esenwine, Thomas J. Sauser, Jeff Hudson, Michelle Boutin, Andre Boutin

I. INTRODUCTION:

Chairman Jack Dearborn called this meeting to order at 7:30 pm, explained how the Board does business, and asked the members of the Board to introduce themselves.

II. PUBLIC HEARINGS:

Case #1012 SHB Properties LLC
Variance Article 14.3.1 Lot Size Restriction
Variance Article 28.9 Wetland Buffer
Tax Map 411-152, Lots 1-15, 752 South Stark Hwy

June Purington moved to accept the application; Forrest Esenwine seconded, all voted in favor.

Michelle Boutin presented the case on behalf of SHB Properties LLC. In 2006, the subdivision was approved as a 14 lot subdivision, but zoning has changed since then, and without variances, they will lose their vesting and have conform to new regulations. They are seeking relief for the acreage and the encroachment of the wetlands, as well as an extension of the vesting time limits. Ms. Boutin read the 5 points of hardship on the application for variance.

1. Granting the variance will not be contrary to the public interest because the rural character of the town will be maintained and enhanced. Also, preservation of open space will be maintained. It will promote and conserve the natural resources and features of the land including wetlands, conservation lands, wildlife corridor and habitats.
2. Granting the variance will not be contrary to the spirit of the ordinance because the land is zoned RA which allows for development of cluster subdivisions.
3. Substantial justice will be done by granting this variance because it will accommodate the extended illness and untimely death of Roger Boutin and the resulting 2+ years of delays and court probate.
4. Values of surrounding properties will not be diminished because the property is fully approved already. It is laid out to provide a significant buffer between all abutters. The homes are positioned a distance off Rte. 114 for the protection of home values of future homeowners and families.
5. There is unnecessary hardship because denial would cause considerable cost to redesign, engineer, and refinance to meet current regulations. There would be a 3-4 lot loss, causing the price per lot to increase making it less affordable and desirable to the public. It is reasonable to grant the variance when you understand the delay was caused by factors beyond their control. They have not intentionally created the need for the variance requested and they could not have anticipated the event or time for resolution.

Neal Kurk said Ms. Boutin is saying that Mr. Boutin's death created the problem because he wasn't around, but the LLC document provided to the Planning Board said someone else was given the rights to run the company. Ms. Boutin explained that each of the 3 partners were required to pay 1/3 of all costs, and those funds could not be provided by Mr. Boutin until probate was clear.

Jack Dearborn closed the public hearing at 8:10 pm.

Forrest Esenwine moved to approve the variances with substantial completion being made to the lot within 5 years; June Purington seconded. Discussion: Neal Kurk said they are not specifically asking for a 5 year extension in the application, and they are asking for 2 variances that would be granted permanently. Mr. Kurk said that the term hardship is specific in that it can't relate to individuals, only the property, and he does not feel the applicant has made a case for hardship or substantial completion and should be denied. Mr. Kurk questioned if the death of a partner and subsequent problems with probate is an okay reason for hardship. Chairman Dearborn said he has heard from Attorney Drescher on the variance and feels there is flexibility for the owner's ability. Forrest Esenwine said there can be an argument made that the courts kept the land tied up so the applicant was unable to do anything. Forrest Esenwine and June Purington rescinded the motion.

Forrest Esenwine moved to grant the variances from Articles 14.3.1 and 28.9 as requested. June Purington seconded. Jack Dearborn, Forrest Esenwine, June Purington, and Stu Richmond approved; Neal Kurk was opposed. The motion passed 4-1.

June Purington moved to accept point 1; Neal Kurk seconded, all voted in favor.

Forrest Esenwine moved to accept point 2; June Purington seconded, all voted in favor.

June Purington moved to accept point 3; Forrest Esenwine seconded, all voted in favor.

June Purington moved to accept point 4; Forrest Esenwine seconded, all voted in favor.

June Purington moved to accept point 5; Stu Richmond seconded. Discussion: Neal Kurk feels the Board lacks the legal authority to grant point 5 because the unnecessary hardship is related to the person and not the land. Jack Dearborn, Forrest Esenwine, June Purington, and Stu Richmond approved; Neal Kurk was opposed. The motion passed 4-1, and vesting rights were granted indefinitely.

III. OTHER BUSINESS:

Minutes: June Purington moved to approve the first draft of the October 2, 2012 minutes; Stu Richmond seconded. Jack Dearborn, June Purington, Neal Kurk, and Stu Richmond voted in favor; Forrest Esenwine abstained.

IV. ADJOURNMENT: As there was no other business to come before the board, Forrest Esenwine moved to adjourn 8:30 pm; June Purington seconded, all voted in favor.

Respectfully Submitted,

Sheila Savaria,
Recording Secretary